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International Convention on the Elimination of all Forms of Racial Discrimination

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14 January 1994

ORIGINAL: ENGLISH

MEETING OF THE STATES PARTIES
Fifteenth meeting
New York, 12 January 1994

LETTER DATED 14 JANUARY 1994 FROM THE CHARGE D'AFFAIRES A.I. OF THE FEDERAL REPUBLIC OF YUGOSLAVIA TO THE UNITED NATIONS ADDRESSED TO THE TEMPORARY CHAIRMAN OF THE FIFTEENTH MEETING OF STATES PARTIES TO THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

I have the honour to transmit to you, in your capacity as temporary Chairman, the text of an aide-mémoire dated 14 January 1994 of the Government of the Federal Republic of Yugoslavia concerning the participation of the Yugoslav delegation in the fifteenth meeting of the States parties to the International Convention on the Elimination of all Forms of Racial Discrimination (see annex).

I should be grateful if you would circulate the present letter and its annex to all States parties to the Convention.

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

Annex

AIDE-MÉMOIRE DATED 14 JANUARY 1994 OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

Since the adoption by the General Assembly of resolution 47/1 of 22 September 1992, some international organizations and specialized agencies have adopted arbitrary decisions in connection with the participation of the Federal Republic of Yugoslavia in their work.

Those decisions are totally unfounded and contrary to the letter and spirit of the above-mentioned resolution of the General Assembly, which pertains solely to non-participation of the Federal Republic of Yugoslavia in the work of the General Assembly. That was clearly confirmed by the opinion of the United Nations Legal Counsel (A/47/485 of 30 September 1992) that "the resolution neither terminates nor suspends Yugoslavia's membership in the organization" and it "does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies".

According to another opinion of the Legal Office of the Secretariat, dated 16 November 1993, the status of Yugoslavia as a party to treaties was not affected by the adoption by the General Assembly of resolution 47/1.

For its part, the Federal Republic of Yugoslavia has clearly stated that it will continue the state, international, legal and political personality of the former Socialist Federal Republic of Yugoslavia and that it will strictly abide by all international commitments undertaken by the SFR of Yugoslavia.

The delegation of the Federal Republic of Yugoslavia regularly participates in the meetings of States parties to various international conventions.

At the fifteenth meeting of the States parties to the International Convention on the Elimination of all Forms of Racial Discrimination, held on 12 January 1994, certain States parties sought to challenge Yugoslavia's right to participate in this meeting.

The Government of the Federal Republic of Yugoslavia strongly considers that such action is totally unfounded and therefore unacceptable for the following reasons:

(a) It is inconsistent with the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination and the rules of procedures for the meeting of the States parties;

(b) The status of the Federal Republic of Yugoslavia as a party to that Convention is not in any way affected by General Assembly resolution 47/1;

(c) The Federal Republic of Yugcslavia has clearly expressed its readiness to abide fully by the commitments arising from that Convention and to cooperate with the Committee on the Elimination of Racial Discrimination;

(d) The delegation of the Federal Republic of Yugoslavia has been officially invited to take part in the meeting of States parties, for which it has duly submitted full powers.

The Government of the Federal Republic of Yugoslavia wishes to draw the attention of the States parties to the International Convention on the Elimination of all Forms of Racial Discrimination that such legally unfounded and politically motivated action by certain States parties may set a dangerous precedent with respect to the status of the States parties to the Convention and create serious obstacles to its implementation.

It should be understood that the denial of the legitimate right to the Federal Republic of Yugoslavia to participate in the meeting of the States parties would at the same time imply the suspension of its obligations arising from the Convention. This would therefore mean that Yugoslavia will no longer be obliged to implement the provisions of the Convention.

The Government of the Federal Republic of Yugoslavia wishes to state that it is fully prepared to honour all its obligations as a State party to this Convention and to participate in that capacity in the meetings of the States parties.

Any decision to the contrary shall be the sole responsibility of those States parties which initiated and supported such action.

The International Convention on the Elimination of all Forms of Racial Discrimination is a specific category of treaties valid erga omnes with the primary goal to protect human beings against all forms of discrimination. Therefore, such a decision would be in total contradiction with this noble goal, as it discriminates against a State party that has demonstrated readiness and resolve to honour and implement the Convention.

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MEETINGS OF THE STATES PARTIES
Fifteenth meeting

NOTE VERBALE DATED 14 JANUARY 1994 FROM THE PERMANENT MISSION OF THE REPUBLIC OF CROATIA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Mission of the Republic of Croatia to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to request that the enclosed aide mémoire be distributed to the delegations of the States Parties at the Fifteenth meeting of the States Parties to the Convention on the Elimination of All Forms of Racial Discrimination, as an official document.

The Permanent Mission of the Republic of Croatia to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

AIDE MEMOIRE

The delegation of an entity calling itself the "Federal Republic of Yugoslavia" has recently sought to participate in the deliberations of the fifteenth meeting of the States Parties to the International Convention on the Elimination of all Forms of Racial Discrimination as the representative of "Yugoslavia".

The Republic of Croatia objects to the participation of the above-mentioned delegation because it cannot be considered a state party to the said Convention.

According to the opinion of the Badinter Commission, established under the auspices of the Conference on the Former Yugoslavia to deal with the legal questions relating to the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), the SFRY ceased to exist as a result of dissolution, and its constituent units became international legal subjects. This was further confirmed in Security Council resolution 777 (1992) which stated that "the state formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist".

Furthermore, according to the said Commission, since there was no agreement among the successor states of the SFRY as to the succession of the rights and obligations of the SFRY, the general rules of international law - which deal with succession of states in regards to treaties, possessions, debt and archives - should be applied. The result of this, in the opinion of the Commission, is that no single successor state can consider itself as the sole successor of the Socialist Federal Republic of Yugoslavia.

All the successor states of the former SFRY, except the so-called "Federal Republic of Yugoslavia" (Serbia and Montenegro), conducted themselves according to the rules of international law and - in the framework of the UN - notified the Secretary General, in his capacity as depository of international treaties, of their intention to be considered, in respect of their respective territories, a party, by virtue of succession of the Socialist Federal Republic of Yugoslavia to various treaties; and sought acceptance to membership in international organizations in accordance with the rules of such organizations.

However, the so-called "Federal Republic of Yugoslavia" (Serbia and Montenegro) has not acted according to international rules and decisions but has *mala fidae* ignored them and tried to participate in international forums as a state party and/or as a member of the international organization with the intention to create a precedent by which it would later seek to prove that it is the sole legitimate successor of the former SFRY.

The so-called "Federal Republic of Yugoslavia", which consists of the former Yugoslav republics of Serbia and Montenegro, claims that it is the sole and automatic successor of the SFRY to international treaties and organizations. This claim is not accepted in the international community because no such agreement was reached by the successor states of the SFRY.

In this regard, reference is to be made to Security Council resolution 777 (1992) and General Assembly resolution 47/1 which considered "that Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations". The Badinter Commission concluded that this decision applies also to membership in international treaties and other international organizations.

Since the so-called "Federal Republic of Yugoslavia" (Serbia and Montenegro) has not notified the Secretary General of its succession to the International Convention on the Elimination of all Forms of Racial Discrimination as one of the successor states of the former SFRY, it cannot be considered as one of the parties to the said convention. Therefore, as a non-party, the said delegation has no right to participate at the fifteenth meeting of the States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

The delegation of the so-called "Federal Republic of Yugoslavia" (Serbia and Montenegro) should, therefore, not be allowed to attend the said meeting and the name plaque of "Yugoslavia" should be removed.

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MEETINGS OF THE STATES PARTIES
Fifteenth meeting

LETTER DATED 14 JANUARY 1994 FROM THE PERMANENT REPRESENTATIVE OF SLOVENIA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I would be grateful if you would have the text of the enclosed letter, addressed to you, circulated as a document of the meeting of the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

Please accept, Your Excellency, the assurances of my highest consideration.

(Signed) Danilo TÜRK
Ambassador

Dr. Danilo Türk
Permanent Representative of Slovenia to the United Nations

New York, January 14, 1994

Excellency,

I wish to bring to your attention an issue resulting from the dissolution and extinction of former Yugoslavia.

As you will recall the Arbitration Commission of the Conference on the Former Yugoslavia, chaired by M. Robert Badinter, has concluded, in its advisory opinion No. 8 of 4 July, 1992 that the process of dissolution of the Socialist Federal Republic of Yugoslavia was complete and that Yugoslavia ceased to exist. Furthermore, the Arbitration Commission emphasized the principle of equality of all successor states of former Yugoslavia. The subsequent resolutions adopted by the Security Council and the General Assembly have confirmed the essence of that opinion. Thus the Security Council stated, in the resolution 777 (1992), "that the State formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist". Given the fundamental importance of this fact it is logical that the Security Council and the General Assembly specifically stated that the "Federal Republic of Yugoslavia (Serbia and Montenegro)" - i.e. one of the successor-States - cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the UN.

The fact of extinction of former Yugoslavia is not fully reflected in the UN practice. In my letter to you and to the President of the Security Council dated 5 August 1993 (S/26246; A/48/292) I referred to those aspects of the problem which relate to the necessary action to be taken by the Security Council and the General Assembly with a view to definitive termination of the membership of the former Yugoslavia to the United Nations. In the present letter I wish to point to the need that appropriate action is taken in the area of the Secretary General's competence with respect to multilateral treaties deposited with the Secretary-General.

The advisory opinion of the Arbitration Commission of the Conference on the Former Yugoslavia and the relevant resolutions adopted by the Security Council and by the General Assembly relate to a fact of basic importance which is necessarily relevant in the context of succession with respect to international treaties, including the multilateral treaties deposited with the Secretary-General. The basic premise, namely the fact that former Yugoslavia has ceased to exist cannot be ignored or circumvented by holding the view that the Security Council and the General Assembly have not spelled out all practical consequences of

that fact. The insistence of the Security Council and the General Assembly that the "Federal Republic of Yugoslavia (Serbia and Montenegro)" cannot be considered as a holder of automatic continuity of the predecessor State has a general relevance for all organs of the UN. These organs have to refrain from acts which create an impression that automatic continuity was granted to one of successor States of former Yugoslavia. The successor States of former Yugoslavia which wish to succeed the predecessor State with respect to an international treaty are bound to notify their succession and none of them can be regarded as a holder of automatic continuity of the predecessor state which has ceased to exist. This should be duly reflected in the relevant official UN publications.

I note with regret that the recent publication entitled "Multilateral Treaties Deposited with the Secretary - General, Status as at 31 December 1992" (ST/LEG/SER.E/11), New York, 1993, refers to "Yugoslavia" as if that former state continued to exist (for example on page 100 of that publication containing the list of Parties to the International Convention on Elimination of All Forms of Racial Discrimination). This reference obscures the fact that a former State party to the Convention has ceased to exist and that none among its successor - States can be considered as a holder of automatic continuity.

I wish to request that appropriate corrections are made in the mentioned and in other relevant publications and that steps are taken to ensure that subsequent publications will accurately reflect the situation resulting from the dissolution and extinction of former Yugoslavia. The lists of States parties can include only those successor States of former Yugoslavia which have notified their succession with respect to various multilateral treaties deposited with the Secretary-General. I wish to add that this request for accurate reflection of facts resulting from extinction of former Yugoslavia relates also to all other relevant activity of the Secretary General in his capacity as the depositary of multilateral treaties.

Please accept, your excellency, the assurances of my highest consideration.

Dr. Danilo Türk
Ambassador

H.E. Dr. Boutros Boutros-Ghali
Secretary-General of the
United Nations

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26 January 1994

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MEETINGS OF THE STATES PARTIES
Fifteenth meeting

LETTER DATED 17 JANUARY 1994 FROM THE CHARGÉ D'AFFAIRES A.I.
OF THE PERMANENT MISSION OF YUGOSLAVIA TO THE UNITED NATIONS
ADDRESSED TO THE SECRETARY-GENERAL

I should be grateful if you would circulate the enclosed statement as a document of the fifteenth meeting of the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

Annex

STATEMENT OF AMBASSADOR DRAGOMIR DJOKIĆ, CHARGÉ D'AFFAIRES A.I. OF THE PERMANENT MISSION OF YUGOSLAVIA TO THE UNITED NATIONS, AT THE FIFTEENTH MEETING OF THE STATES PARTIES TO THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, HELD ON 17 JANUARY 1994

The delegation of the Federal Republic of Yugoslavia expresses its strong objection with regard to the attempts by certain States parties to the Convention to challenge participation of the Yugoslav delegation in this meeting.

As we have already explained in the aide-mémoire which is, we believe, distributed to all States parties, any action in connection with Yugoslavia's participation in this meeting is unfounded and inconsistent with the letter and spirit of the Convention and the rules of procedure for this meeting and, therefore, shall be the sole responsibility of those States parties which initiated and supported such action.

Various arguments advanced by some delegations, trying to invoke General Assembly resolution 47/1 of 22 September 1992 and the issues of succession and continuity of the former Socialist Federal Republic of Yugoslavia as a pretext for their action, are unwarranted and falsely construed.

For the sake of clarity, allow me to briefly state some of the reasons which support the above-mentioned conclusions.

1. The Socialist Federal Republic of Yugoslavia became a State party to the International Convention on the Elimination of All Forms of Racial Discrimination on 4 January 1969.

2. In the Declaration of the Assembly of the Federal Republic of Yugoslavia dated 27 April 1992, it was clearly stated that the Federal Republic of Yugoslavia will continue the state, international, legal and political personality of the former Socialist Federal Republic of Yugoslavia and that it undertakes to honour all international obligations of the former Socialist Federal Republic of Yugoslavia, including those arising from international instruments on human rights.

3. This position is unequivocally supported by rules of international customary law which are codified in the 1978 Vienna Convention on Succession of States in respect of Treaties (arts. 34 and 35).

4. The status of the Federal Republic of Yugoslavia as a party to treaties is not in any way affected by General Assembly resolution 47/1, which pertains solely to non-participation in the General Assembly. According to the opinion of the United Nations Legal Counsel contained in document A/47/485: "The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies." According to another opinion of the United Nations Legal Office dated 16 November 1993: "The status of Yugoslavia

as a party to the treaties is not affected by the adoption of General Assembly resolution 47/1 ..."

5. The delegation of the Federal Republic of Yugoslavia has been officially invited to this meeting, for which it has duly submitted full powers.

6. The present meeting is not an appropriate forum for the discussion of either issue arising from the succession of the former Socialist Federal Republic of Yugoslavia or the status of the Federal Republic of Yugoslavia in the United Nations. These issues are under consideration within the International Conference on the Former Yugoslavia and in the United Nations.

7. The Federal Republic of Yugoslavia clearly expressed its readiness and resolve to honour all its duties and obligations arising from the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee on the Elimination of Racial Discrimination at its forty-third session in 1993 (A/48/18) welcomed the timely submission of the report of the Federal Republic of Yugoslavia and the presence of a delegation as an indication of the State party's willingness to continue the dialogue with the Committee. In the spirit of cooperation, the Federal Republic of Yugoslavia welcomed the fact-finding mission of the Committee which visited Yugoslavia at the end of 1993.

8. Therefore, the least required from the Federal Republic of Yugoslavia, as a State party to the Convention, is to participate in the meetings of the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

In view of those arguments, my delegation is fully convinced that, in fact, the action to suspend Yugoslavia's participation in this meeting is entirely politically motivated in order to satisfy one-sided and myopic interests of certain States.

We would like to emphasize once again that such legally unfounded and politically motivated action may set a dangerous precedent with respect to the status of the States parties to the Convention and create serious obstacles in its implementation.

It should be understood that the denial of the legitimate right of the Federal Republic of Yugoslavia to participate in the meeting of the States parties would at the same time imply the suspension of its obligations arising from the Convention. Therefore, it would mean that Yugoslavia will not be obliged any more to implement the provisions of the Convention.

This will result in suspension of the activities and cooperation of the Federal Republic of Yugoslavia with the Committee on the Elimination of Racial Discrimination. Moreover, unfortunately, the Committee will not be in a position to request the Federal Republic of Yugoslavia to undertake any activity under the Convention, or to send any fact-finding mission to its territory.

We would like to remind the States parties that this Convention belongs to a special category of treaties whose beneficiaries are not States but individual human beings. That was exactly the reason why the International Court of

Justice, in the so-called Barcelona Traction case, ruled that international human rights instruments are valid erga omnes and should be accorded a privileged status, i.e., that they should be universally accepted.

Therefore, my delegation does not request anything which is beyond its status as a State party to the Convention, i.e., to continue to honour its commitments under the Convention in order to ensure that human beings are protected against all forms of discrimination.

Consequently, my delegation strongly opposes any kind of pressure or imposition of rule of the majority by any group of States. To accept such an approach inspired purely by political reasons would be disastrous both for the cooperation of States parties and the future implementation of the Convention. This would only result in the creation of chaos in international relations and blatant disregard of basic principles of international law and the Charter of the United Nations concerning universality and sovereign equality of States.

We are convinced that there is nothing in the proposal of the States parties which challenged the participation of the Federal Republic of Yugoslavia that justifies their attempts to undermine the above-mentioned universal values. If the States parties are resolved to do so, my delegation wishes to clearly disassociate itself from such an action.